

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1810 (Levine)
Version: March 30, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Pupil health: seizure disorders

DIGEST

This bill authorizes schools to designate and train persons to provide anti-seizure medication in an emergency involving a pupil diagnosed with a seizure disorder. The persons must be provided defense and indemnification and are granted qualified immunity, as specified.

EXECUTIVE SUMMARY

There are tens of thousands of children diagnosed with seizures, a seizure disorder, or epilepsy in California. Their seizures are often unpredictable and can quickly become medical emergencies.

This bill authorizes a local educational agency (LEA), upon receipt of a request from the parent or guardian of a pupil diagnosed with seizures, a seizure disorder, or epilepsy to designate volunteers at the school to receive training regarding the emergency use of anti-seizure medication. School nurses or, if none, a trained volunteer, are authorized to administer emergency anti-seizure medication to a diagnosed pupil if the pupil is suffering from a seizure. LEAs must provide written assurance that each trained employee who volunteers will be provided defense and indemnification for any and all civil liability. A trained person who administers emergency anti-seizure medication in compliance with this bill, in good faith and not for compensation, to a pupil who appears to be experiencing a seizure is shielded from professional review and is provided qualified immunity for attendant civil and criminal claims.

This bill is sponsored by the Epilepsy Foundation Los Angeles. It is supported by a large array of groups, including the California School Nurses Organization. It is opposed by the California Nurses Association. This bill passed out of the Senate Education Committee on a 6 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 2) Establishes, through the Government Tort Claims Act ("the Act"), rules of civil liability that apply to public entities and public employees in California. (Gov. Code § 810 et seq.) The Act generally provides that all public entities, state and local, are liable in tort to the extent declared by statute, subject to stated immunities and defenses. (Gov. Code § 815 et seq.) Public employees are liable to the same extent as private persons, subject to various immunities and defenses. (Gov. Code § 820 et seq.)
- 3) Authorizes LEAs to designate volunteers to train on emergency use of an epinephrine auto-injector. A school nurse or volunteer is authorized to administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis at school or a school activity. The LEA is required to ensure that each employee who volunteers will be provided defense and indemnification for any and all civil liability. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file. (Educ. Code § 49414.)
- 4) Authorizes LEAs to designate volunteers to train on the emergency use of naloxone hydrochloride or another opioid antagonist. A school nurse or volunteer is authorized to administer naloxone hydrochloride or another opioid antagonist to a person exhibiting potentially life-threatening symptoms of an opioid overdose at school or a school activity. The LEA is required to ensure that each employee who volunteers will be provided defense and indemnification for any and all civil liability. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file. (Educ. Code § 49414.3.)
- 5) Provides that a person trained to administer naloxone hydrochloride or another opioid antagonist that, in good faith and not for compensation, provides it to a person who appears to be experiencing an opioid overdose shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for their acts or omissions in administering the naloxone hydrochloride or another opioid antagonist. This immunity does not apply in a

case of gross negligence or willful and wanton misconduct of the person. (Educ. Code § 49414.3.)

This bill:

- 1) Authorizes an LEA, if a pupil diagnosed with seizures, a seizure disorder, or epilepsy has been prescribed an emergency anti-seizure medication, upon receipt of a request from the pupil's parent or guardian, to designate one or more volunteers to receive initial and annual refresher training, based on developed standards, regarding the emergency use of anti-seizure medication from the school nurse or other qualified person.
- 2) Requires an LEA, before administering emergency anti-seizure medication or therapy, to obtain from the pupil's parent or guardian a seizure action plan.
- 3) Requires an LEA to ensure that each employee who volunteers will be provided defense and indemnification for any and all civil liability. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.
- 4) Provides that a trained person who administers emergency anti-seizure medication or medication in compliance with this bill, in good faith and not for compensation, to a pupil diagnosed with seizures, a seizure disorder, or epilepsy who appears to be experiencing a seizure shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for the person's acts or omissions in administering the emergency anti-seizure medication.
- 5) Provides that this immunity does not extend to an act or omission that constitutes gross negligence or willful or wanton misconduct and does not affect the ability of a licensing board to take disciplinary action against a licensed health care professional for an act not specifically authorized by this article.
- 6) Provides that any public employee who volunteers to administer emergency anti-seizure medication is not providing emergency medical care for compensation, notwithstanding the fact that the employee is a paid public employee.

COMMENTS

1. Epilepsy and seizure disorders

According to the CDC:

Epilepsy is a disorder of the brain that causes seizures. These seizures are not caused by a temporary underlying medical condition such as a high fever.

Epilepsy can affect people in very different ways. This is because there are many causes and many different kinds of seizures. Some people may have multiple types of seizures or other medical conditions in addition to epilepsy. These factors play a major role in determining both the severity of the person's condition and the impact it has on his or her life.

The way a seizure looks depends on the type of seizure a person is experiencing. Some seizures can look like staring spells. Other seizures can cause a person to collapse, shake, and become unaware of what's going on around them.¹

The CDC estimated that in 2015 over one percent of Americans had active epilepsy, amounting to about 3.4 million people. Of this number nearly half of a million are children.

The CDC reports that about one in ten people may have a seizure in their lifetime, but that most seizures usually do not require emergency medical attention.² This bill addresses situation when they do.

2. Training volunteers to provide emergency care to seizure victims

According to the author:

AB 1810 would establish the Seizure Safe Schools Act to allow schools to designate one or more volunteers to receive initial and annual refresher training for the emergency use of anti-seizure medication for a pupil diagnosed with seizures, a seizure disorder, or epilepsy, if the pupil is suffering from a seizure. California has enacted similar laws for the use of epinephrine for allergic reactions (SB 1266, Huff 2014) and naloxone for opioid overdoses (AB 1748, Mayes 2016).

¹ *Epilepsy Fast Facts* (September 30, 2020) CDC, <https://www.cdc.gov/epilepsy/about/fast-facts.htm>. All internet citations are current as of June 11, 2022.

² *Seizure First Aid* (January 2, 2022) CDC, <https://www.cdc.gov/epilepsy/about/first-aid.htm>.

The volunteer training would include recognition of the signs and symptoms of seizures and the appropriate steps to be taken to respond to those symptoms. In addition, the bill would provide for the development of "seizure action plans" for all students diagnosed with epilepsy or seizures and identify students eligible for individualized education plans (IEPs) and Section 504 accommodations. AB 1810 would also guarantee protections for the employees who volunteer to administer the medication.

Twelve states have already implemented versions of the Seizure Safe Schools Act. This bill will provide school sites with information and training necessary to aid children with Epilepsy while on campus and create a safer environment for these children to succeed.

As stated, the bill authorizes LEAs to identify and train volunteers to be prepared to administer emergency anti-seizure medication or medication prescribed for seizure disorder symptoms. The Superintendent of Public Instruction is required to establish minimum standards of training for the administration of emergency anti-seizure medication, as provided.

A school nurse or, if the school does not have a school nurse or the school nurse is not onsite or available, a volunteer who has been designated and received training is authorized to administer emergency anti-seizure medication to a pupil diagnosed with seizures, a seizure disorder, or epilepsy if the pupil is suffering from a seizure. However, before administering emergency anti-seizure medication or therapy prescribed to treat seizures in a diagnosed pupil, an LEA must obtain a seizure action plan from the pupil's parent or guardian that includes specified information.

3. Providing defense, indemnification, and immunity

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured

parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

This bill first requires an LEA to ensure that each employee who volunteers to administer emergency anti-seizure medication to a pupil diagnosed with seizures, a seizure disorder, or epilepsy will be provided defense and indemnification by the LEA for any and all civil liability. This commitment must be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

In addition, a person trained as required by the bill and who administers emergency anti-seizure medication in compliance with this article, in good faith and not for compensation, to a diagnosed pupil who appears to be experiencing a seizure shall not: (1) be subject to professional review, (2) be liable in a civil action, or (3) be subject to criminal prosecution for the person's acts or omissions in administering the emergency anti-seizure medication. This protection does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct. Nor does the bill affect a person's culpability for an act that constitutes a crime and is not specifically authorized or the ability of a licensing board to take disciplinary action against a licensed health care professional for an act not specifically authorized.

The bill clarifies that any public employee who volunteers to administer emergency anti-seizure medication is not providing emergency medical care for compensation, notwithstanding the fact that the employee is a paid public employee.

These provisions mimic similar existing laws. For instance, Education Code section 49414.3 authorizes LEAs to designate volunteers to train on emergency use of naloxone hydrochloride or another opioid antagonist. A school nurse or trained volunteer is authorized to administer naloxone hydrochloride or another opioid antagonist to a person exhibiting potentially life-threatening symptoms of an opioid overdose at school or a school activity. The LEA is required to ensure that each employee who volunteers

will be provided defense and indemnification for any and all civil liability. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file. A person trained to administer naloxone hydrochloride or another opioid antagonist that, in good faith and not for compensation, provides it to a person who appears to be experiencing an opioid overdose shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for their acts or omissions in administering the naloxone hydrochloride or another opioid antagonist. This immunity does not apply in a case of gross negligence or willful and wanton misconduct of the person.

This is identical to the provisions of the current bill. In both situations, volunteers are provided qualified protection to encourage them to step in and provide medical assistance when there is an emergency. However, the bill ensures that the volunteers are trained according to set standards and does not shield them from liability for egregious or intentional misconduct.

It should be noted that the Legislature has previously passed legislation that was substantially similar to this bill. AB 161 (Huff, Ch. 560, Stats. 2011) authorized LEAs to train volunteers in the administration of emergency anti-seizure medication. It also required LEAs to defend and indemnify said volunteers from any civil liability. However, the statute was allowed to sunset on January 1, 2017.

4. Stakeholder positions

The Epilepsy Foundation Los Angeles, the sponsor of the bill, writes:

There are approximately 59,800 children living with epilepsy and seizures in California. Our organization knows that seizures are unpredictable and can occur at any time—including during school hours. While school nurses are trained to recognize and respond to seizures, a nurse may not always be on site at school or available when one occurs. It is crucial that other school employees have the opportunity to be trained properly to recognize and, if necessary, to respond to a seizure and help the child.

The costs involved with establishing and maintaining the training and education program created by AB 1810 have been determined to be minor. For students with epilepsy, however, the return on this small investment in their safety will be enormous.

In 2013, the Supreme Court of California ruled that non-medical school personnel may respond to a student having a seizure and administer their prescribed emergency anti-seizure medication, medications which were designed to be administered outside of a medical setting by a responsible adult and were approved by the FDA for that purpose. But as of now,

there is no uniform standard for the training and education on seizure recognition and response these school employees receive. AB 1810 would close that gap, as well as offer additional protections to the school employees who assist a student having a seizure.

A large coalition of organizations writes in support:

Seizures can happen in any place, at any time. According to the Centers for Disease Control and Prevention (CDC), approximately 336,000 kids have at least one seizure annually. Compared to students with other health concerns, a study from the CDC found that students 6-17 years of age living with the epilepsies were more likely to miss 11 or more days of school in the past year. Proper seizure first aid and continuity of care while children and youth are at school are necessary to ensure that students with the epilepsies remain safe and can reach their full potential with as minimal disruption to their learning as possible.

California's Seizure Safe School Act (AB 1810) helps achieve these goals by:

- Allow schools to designate one or more volunteer employees to receive training on seizure recognition and response and administration of emergency anti-seizure medications.
- Establish training standards for school employees who volunteer to support students with epilepsy or seizures.
- Safeguard physician-directed care by supporting development of seizure action plans for students with epilepsy or seizures and identifying students who may be eligible for Individual Education Plans (IEPs) and Section 504 accommodations.
- Guarantee legal protections for school employees who volunteer to support a student with epilepsy or seizures and administer emergency anti-seizure medication.

Writing in opposition, the California Nurses Association argues that this bill improperly tasks and incentivizes non-medical professional volunteers to provide emergency medical care:

The administration of Diastat requires a level of knowledge and experience that cannot be acquired with a training of unknown duration for nonmedical school personnel who likely have had no exposure to providing health care services and/or have an understanding of epilepsy. There does not appear to be any indication that the designated school personnel who would administer seizure rescue medication should have experience in providing first aid, have any previous exposure to epilepsy or have ever witnessed a person experiencing a seizure.

The manufacturer's instructions indicate that Diastat requires an assessment prior to its administration, i.e. the ability to identify "cluster seizures" which is deemed an emergency and would warrant the administration of Diastat. Epileptics have seizures and they may occur for a variety of reasons, i.e., the child may be recently diagnosed, and the medication blood levels are not sufficient to prevent seizures. Seizure activity does not always rise to the level of an emergency. The administration of Diastat is seen as an emergency and its administration is contraindicated if a child is experiencing ordinary seizure activity. These issues must be considered, and a competent assessment made prior to administering Diastat. Additionally, the administration of a rectal gel when an individual is seizing requires a level of skill that comes with experience to prevent injury to the individual while protecting their privacy.

Because of funding cuts and priority setting, many school districts do not employ adequate numbers of school nurses thus making it more difficult to adhere to federal laws regulating the provision of health services in schools.

SUPPORT

Epilepsy Foundation Los Angeles (sponsor)
American Academy of Pediatrics, California
American Epilepsy Society
American Nurses Association\ California
Association of Regional Center Agencies
Batten Disease Support and Research Association
Cacna1a Foundation
California Chronic Care Coalition
California Life Sciences
California Neurology Society
California School Nurses Organization
CFC International
Child Neurology Foundation
CMCD Foundation
Coalition to Cure CHD2
Cure Epilepsy
Cureshank
Danny Did Foundation
Dravet Syndrome Foundation
Dup15q Alliance
Epilepsy Foundation
Epilepsy Foundation of Northern California

Epilepsy Foundation of San Diego County
Epilepsy Foundation Orange County
GRIN2B Foundation
Hope for HIE
International Foundation for Cdk15 Research
Jordan's Guardian Angels
Kcnq2 Cure Alliance
Kif1a.org
Koolen-de Vries Syndrome Foundation
Lennox-gastaut Syndrome (LGS) Foundation
Malan Syndrome Foundation
National Association of Epilepsy Centers
National Association of Pediatric Nurse Practitioners (NAPNAP)
Paul's Purple Warriors
Pcdh19 Alliance
Phelan-mcdermid Syndrome Foundation
Rare Epilepsy Network (REN)
Rasopathies Network
Ring14 USA
SMC1A Foundation
STXBP1 Foundation
SYNGAP1 Foundation
The Cute Syndrome Foundation
TSC Alliance

OPPOSITION

California Nurses Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 35 (Reyes & Umberg, Ch. 17, Stats. 2022) provides for increases to the caps on noneconomic damages and the contingency fees that can be earned by attorneys that were imposed by the Medical Injury Compensation Reform Act. It also prohibits the use of expressions of sympathy, benevolence, or fault as evidence of an admission of liability in nearly all civil and administrative proceedings and prevents them from being used in relation to any sanction, penalty, or liability.

AB 2116 (Levine, 2020) was similar to the current bill. It died in the Assembly Education Committee.

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AB 161 (Huff, Ch. 560, Stats. 2011) *See* Comment 3.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Education Committee (Ayes 7, Noes 0)
